

REMARKS

Status of the Claims

By this Amendment, Applicant has canceled claim 7 without prejudice or disclaimer. Accordingly, claims 1, 5, 6, 8-30, and 35-68 are pending in this application. Claims 1, 27, 54-56, 61, and 68 are independent.

In the Office Action, claims 1, 6, 10, 11, 15-30, 45-59, and 65-68 are rejected under 35 U.S.C. §102(b) as being allegedly anticipated by Sternfield et al. (U.S. Patent No. 2,665,528). In addition, claims 5, 7-9, 14, 35-44, and 60 are rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over the Sternfield in view of Smith (U.S. Patent No. 6,491,928). Finally, claims 12, 13, and 61-64 are rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over the Sternfield in view of Yoko (JP 04108710; hereinafter "Yoko").

Rejection under 35 U.S.C. §102(b)

Applicant respectfully submits that the rejection of claims 1, 6, 10, 11, 15-30, 45-59, and 65-68 under 35 U.S.C. §102(b) should be withdrawn because the cited art fails to disclose all of the recited features of independent claims 1, 27, 54-56, and 68.

Applicant has amended each of independent claims 1, 27, 54-56, and 68 to include recitations relating to, e.g., a keratinous surface region. Support for these amendments is provided in the original application, for example, in the specification at page 1, line 5 and in original claims 1 and 7. Accordingly, no new matter has been added.

Applicant respectfully submits that the device of Sternfield is not configured to be placed into contact with a keratinous surface region, because the cleansing media and

the active agents disclosed by Sternfield are unsuitable for application to keratinous surfaces. Notably, Sternfield discloses a device for cleaning “surfaces which have been coated with oil, dirt, vegetable greases and the like” (col. 1, lines 5-6), which indicates that the device is configured for cleaning heavily soiled surfaces. This configuration is confirmed by the materials employed by Sternfield, such as an abrasive cleansing media (14), which includes “abrasive material, such as silicon dioxide, silica, diatomaceous earth, and combinations thereof.” Col. 3, lines 33-49.

Moreover, each of the three examples listed in column 3 of Sternfield includes at least one irritant and/or caustic material that is unsuitable for contact or use with keratinous surfaces. Soda ash, included in Example A, is caustic and a human irritant. Example B includes trisodium phosphate, an irritant which may cause possible residual injury upon continued exposure. In addition, tricalcium phosphate, listed as an ingredient of Example C, is also a skin irritant.

For at least these reasons, the device of Sternfield is not configured to be placed in contact with a keratinous surface region, as required by Applicant’s independent claims 1, 27, 54-56, and 68. Accordingly, Applicant respectfully submits that the § 102(b) rejection of these claims should be withdrawn.

In addition, each of independent claims 1, 27, and 54-56 has been amended to recite at least one “compound configured to swell within the adhesive matrix upon contact with the solvent to reduce cohesion between the adhesive matrix and the at least one active agent,” a feature formerly recited in claim 7. In the Office Action, the Examiner acknowledges that Sternfield does not disclose “the absorbent materials in the middle layer as claimed by claim 7” (Office Action at 4.) The Examiner relies

on Smith for an alleged teaching of this claim feature. The Examiner alleges that Smith teaches that “[t]he therapeutic composition comprises cellulose or starches that are claimed by applicant as moisture absorbing compounds in Claims 7 and 9 (col. 36, lines 9-11; col. 37, lines 1-2).” (Office Action at 5.)

The Office Action cites Smith at col. 36, lines 9-11, which mentions a hydrocolloid that may include various types of cellulose or starches. However, Smith does not specify that these materials are “configured to swell within the adhesive matrix upon contact with the solvent to reduce cohesion between the adhesive matrix and the at least one active agent,” as recited in independent claims 1, 27, 54, 55, and 56. Rather, Smith discloses that these materials are hydrocolloids and are disclosed to be “helpful in extending the useful life of the surfactants contained in the cleansing component of the [Smith] invention.” Col. 36, lines 4-6. These hydrocolloids are used to change the physical properties of the overall material. For example, xanthan gum, mentioned at col. 36, lines 8-9, is a thickener often used in food products for its ability to maintain the homogeneity of a colloid. http://en.wikipedia.org/wiki/Xanthan_gum. Also, starch octenyl succinate, mentioned at col. 36, line 12, is an emulsifier, which is a compound that helps two immiscible fluids remain mixed together in an emulsion. <http://en.wikipedia.org/wiki/Emulsifier#Emulsifier>. Thus, these hydrocolloids do not appear to be “configured to swell . . . to reduce cohesion between the adhesive matrix and the at least one active agent,” as required by independent claims 1, 27, 54, 55, and 56.

The Office Action also cites Smith at col. 37, lines 1-2, which mentions a “hydrogel forming polymeric material” that is “highly absorbent and able to retain water

in its absorbed or 'gel' state.” However, Smith explains that this material is for “creat[ing] a 3-dimensional volume which makes a thin substrate feel like a thicker washing cloth.” (Col. 46, lines 44-47.) Therefore, Applicant respectfully submits that Smith does not disclose that this material is “configured to swell within the adhesive matrix upon contact with the solvent to reduce cohesion between the adhesive matrix and the at least one active agent,” as recited in independent claims 1, 27, 54, 55, and 56.

While cellulose and starch are recited in claim 9, there are many different types of cellulose and starch, as evidenced by the multiple versions of each that are listed in Smith at col. 36, lines 9-13. Not all types of cellulose have the same properties. The same is true for starches. Applicant has specified at least one property of the cellulose and starch listed in claim 9, namely that these materials be “configured to swell within the adhesive matrix upon contact with the solvent to reduce cohesion between the adhesive matrix and the at least one active agent,” as recited in independent claim 1. There is no indication that the materials in Smith are so configured.

For at least these additional reasons, the § 102(b) rejection of independent claims 1, 27, 54, 55, and 56 should be withdrawn.

In addition, Applicant respectfully submits that one of ordinary skill would not have found any reason to combine the teachings of Smith with those of Sternfield. As discussed above, Sternfield does not disclose devices that are configured to be placed in contact with a keratinous surface region, due to the abrasiveness of the materials and/or the harmfulness of the compounds included. On the other hand, Smith explicitly discloses that the disclosed device is for cleansing skin and hair. Abstract. Applicant

respectfully submits that a skilled artisan would not have found any reason to combine the teachings of the skin and hair cleansing article with the device of Sternfield, which is apparently configured for scrubbing inanimate objects, not keratinous surfaces.

Rejection under 35 U.S.C. §103(a)

The rejection of independent claim 61 under § 103(a), based on Sternfield in view of Yoko, fails to establish a prima facie case of obviousness, because the cited art does not disclose or suggest all of the recited claim limitations. Claim 61 includes recitations similar to those discussed above for independent claim 1. That is, claim 61 recites “at least one of the two support layers being permeable to a solvent and defining an outer surface of the composite structure, the outer surface being configured to be placed into contact with the keratinous surface region.” Thus, claim 61 is distinguishable over Sternfield for reasons similar to some of the reasons discussed above with respect to independent claim 1.

Yoko is cited only for an alleged teaching of a “cosmetic in adhesive matrix comprising magnetizable particles,” (Office Action at 12), and fails to cure the above-noted deficiencies of Sternfield. Therefore, the cited art does not disclose or suggest all of the recited features of independent claim 61, and thus, the Office Action fails to establish a prima facie case of obvious with respect to claim 61. Accordingly, Applicant respectfully submits that the § 103(a) rejection of independent claim 61 should be withdrawn.

Conclusion

For at least the foregoing reasons, Applicant respectfully submits that each of independent claims 1, 27, 54-56, 61, and 68 is allowable. Each of claims 5, 6, 8-26, 28-

30, 35-53, 57-60, and 62-67 ultimately depends from one of these allowable independent claims and, therefore, should be allowable for at least the same reasons that the respective claim from which it depends is allowable.

Applicant requests the Examiner's reconsideration of the application and the timely allowance of the pending claims.

The Office Action contains a number of statements reflecting assertions and/or allegations concerning the claims and/or cited art. Regardless of whether any such statement is identified above, Applicant declines to subscribe to any assertion or allegation in the Office Action.

Please grant any additional extensions of time required to enter this response and charge any additional required fees to Deposit Account 06-0916.

Respectfully submitted,

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